Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fourth Chamber, Extended Composition)

23 March 2022 *

(Civil service – Officials – Disciplinary penalty – Reprimand – Article 21a of the Staff Regulations – Error of assessment)

In Case T-757/20,

OT, represented by C. Bernard-Glanz and S. Rodrigues, lawyers,

applicant,

v

European Parliament, represented by I. Lázaro Betancor and M. Windisch, acting as Agents,

defendant,

ACTION under Article 270 TFEU seeking annulment of the Parliament's decision of 19 December 2019 imposing a reprimand on the applicant,

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of S. Gervasoni, President, L. Madise, P. Nihoul (Rapporteur), R. Frendo and J. Martín y Pérez de Nanclares, Judges,

Registrar: H. Eriksson, Administrator,

having regard to the written part of the procedure and further to the hearing on 26 November 2021,

gives the following

* Language of the case: French.

Judgment

I. Background to the dispute

1 The dispute concerns the applicant, OT, an official at the European Parliament, on whom the Parliament imposed a reprimand for having signed two notes authorising the use of the negotiated procedure without prior publication while she was a member of the temporary staff at the European Asylum Support Office (EASO).

A. EASO

2 EASO, which has its headquarters in Valletta (Malta) was created by Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 (OJ 2010 L 132, p. 11), to help improve the implementation of the Common European Asylum System (CEAS), to strengthen practical cooperation on asylum matters between the Member States and to provide operational support to Member States facing specific pressures on their asylum and reception systems, or to coordinate the provision of such support. Since 2015, EASO has been providing support to Greece, in particular, against the background of the migration crisis.

3 At the material time, EASO was divided into three departments: the 'Department of Asylum Support' (DAS), the 'Department of Operations' (DOP) and the 'Department of Administration' (DOA). The latter department had a Finance sector and a Procurement sector.

B. The applicant's position within EASO

4 Between April and October 2016, the applicant, who had been an official at the Parliament since 2004, was seconded to EASO in the interests of the service.

5 On 1 November 2016, she took leave from the Parliament on personal grounds and was engaged by EASO, as a member of the temporary staff, as the head of the Department of Asylum Support.

6 From May 2017, the applicant was also responsible, together with the head of the Department of Administration for the day-to-day management of the Department of Operation, the head of which, A, was absent due to illness.

7 On 16 July 2017, the applicant, while remaining head of the Department of Asylum Support was appointed interim head of the Department of Operations, a position she retained until her resignation on 31 July 2018.

8 On 1 September 2018, the applicant returned to her duties at the Parliament.

C. The notes at issue

9 In October 2016, EASO, in conjunction with the Greek authorities, decided to relocate the reception and identification centres it operated with the Greek asylum service away from the refugee camps ('hotspots') of Mória (Lesbos, Greece) and Vial (Chios, Greece).

10 On 22 February 2017, A, signed an 'exception note', under which the building to which EASO was to relocate was to be leased for three years from a company which was also to carry out repair and construction works. The cost of the operation, including maintenance, was evaluated at EUR 351 120.

11 Point 1 of the note explained that riots and strikes had broken out in the refugee camps, posing security risks for those working in the camps and disrupting the activities that had been ongoing there, and that a number of Member States had therefore requested that the experts be moved out of the camps, failing which they would be withdrawn. The Greek Government was one of those Member States.

12 Point 2 of the note stated as follows:

'Due to the time constraints, it is deemed necessary to proceed with the contracts to be signed without following the appropriate procurement procedure.'

13 On 11 May 2017, the applicant, in her capacity as head of the Department of Asylum Support, signed a first amendment to that note ('the note of 11 May 2017') providing for the same buildings to be leased from the same person for four years, and for further works to be carried out, including the construction of 12 additional working spaces. The cost of the operation was now evaluated at EUR 655 609.85.

14 The choice of procedure was justified in the same way as in A's note of 22 February 2017.

15 On 11 June 2017, the applicant, in her capacity as interim head of the Department of Operations, also signed a note ('the note of 11 June 2017') pursuant to which a building on the island of Chios would be leased from a company for a period of four years, and works would be carried out on that building. The cost of the operation was estimated at EUR 1 040 609.85.

16 The situation justifying that note was described in the same terms as in the notes of 22 February and 11 May 2017.

17 In point 2, the note of 11 June 2017 stated that six buildings had been identified with the Greek authorities, but that the selected building had been considered as the most suitable due, in particular, to its location and size.

18 Point 4 of the note of 11 June 2017 added the following:

'Due to the time constraints and the urgency of the issue, it is deemed necessary to proceed with the contracts to be signed without following the appropriate procurement procedure.

The direct contracting of the buildings was determined by a number of factors as security considerations, ensuring business continuity, locations of existing buildings on the island of Chios, local social acceptance and mainly the request from the Hellenic Authorities. These requirements pre-determined the use of direct procurement procedure for the resulting lease contract.'

19 The leases of the buildings on the islands of Lesbos and Chios were signed on 16 June and 10 August 2017 respectively.

D. The OLAF investigation

20 On 6 June 2017, the European Anti-Fraud Office (OLAF) opened an investigation regarding the Executive Director of EASO concerning non-compliance with the rules relating to public procurement, recruitment procedures, data protection and the prohibition of harassment.

21 By letter of 5 December 2017, the applicant was informed that the OLAF investigation had been widened to cover other individuals, including the applicant herself.

22 On 19 February 2018, the applicant was interviewed by OLAF pursuant to Article 9(2) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by [OLAF] and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ 2013 L 248, p. 1).

23 On 27 July 2018, the applicant was invited to comment on the summary of the facts drawn up by OLAF in accordance with Article 9(4) of Regulation No 883/2013, which she did in a letter of 17 August 2018.

24 By letter of 28 November 2018, OLAF sent the Secretary-General of the Parliament, in accordance with Article 11(1) and (4) of Regulation No 883/2013, a recommendation to open disciplinary proceedings against the applicant, amongst others, for non-compliance with the obligations imposed by Articles 21 and 21a of the Staff Regulations of Officials of the European Union ('the Staff Regulations').

25 It is apparent from OLAF's summary of the facts, which was sent to the applicant on 27 July 2018, that she was accused in particular of involvement in procedures which did not comply with the public procurement rules, in that exception procedures had been used on the basis of urgency, when the period between the decision to lease the buildings concerned and the signature of the leases was 8 months in one case and 10 in the other, and in that no proper market survey had been carried out.

26 OLAF also found that, in respect of the building on the island of Lesbos, the estimated cost in August 2017 was EUR 811 478, whereas the provisional budget had been EUR 351 120 in February 2017, and that, in respect of the building on the island of Chios, there had been unjustified expenditure of a minimum of approximately EUR 85 000.

E. Disciplinary proceedings

27 By letter of 4 February 2019, the Secretary-General of the Parliament informed the applicant that, following OLAF's recommendations, he had decided, pursuant to Articles 1 and 2 of Annex IX to the Staff Regulations and Article 2 of the general implementing provisions of 18 May 2004 concerning disciplinary proceedings and administrative investigations ('the general implementing provisions') to open an administrative investigation to establish whether, during her period of secondment to EASO, she had breached the obligation incumbent on her under Article 21a of the Staff Regulations to draw attention to irregularities and serious misconduct.

28 On 7 March 2019, the applicant was interviewed by the persons appointed by the Secretary-General of the Parliament to conduct the administrative investigation.

29 On 29 March 2019, the applicant sent the investigators additional observations supplementing what she had said on 7 March 2019.

30 On 7 June 2019, the investigators appointed by the Parliament drew up, in accordance with Article 2(3) of the general implementing provisions, the final administrative investigation report, in which they stated that the applicant had breached Article 21a of the Staff Regulations by failing to inform either her superiors or the competent authorities that the financial rules had not been complied with in relation to the signing of the two leases of the buildings on the islands of Lesbos and Chios. The non-compliance with the financial rules was twofold: first, 'the use of exception procedures was not strictly required given the time available to the Agency, which was sufficient for it to follow the ordinary procedure', and second, 'no real survey of the local market was carried out, which led to questionable decisions'. The investigators also considered that, as an experienced official and a lawyer by training, the applicant knew or ought to have known that the financial rules had not been complied with.

31 By letter of 18 June 2019, the Parliament, in accordance with Article 2(2) of Annex IX to the Staff Regulations and Article 2(3) of the general implementing provisions, sent that report to the applicant and informed her that the Secretary-General of the Parliament had decided to proceed with the hearing which is required before any disciplinary proceedings can be initiated, in accordance with Article 3(1) of Annex IX to the Staff Regulations and Article 3 of the general implementing provisions.

32 By email of 9 July 2019, the applicant provided her observations on the investigation report.

33 On 10 July 2019, the applicant was interviewed by the Director-General of Personnel pursuant to Article 3(1) of Annex IX to the Staff Regulations and Article 3 of the general implementing provisions.

34 By letter of 8 November 2019, the Secretary-General of the Parliament informed the applicant of his decision not to put the matter before the Disciplinary Board, as 'it [was] appropriate to take into account not only the especially difficult conditions in which [she had] performed [her] role, against the background of a humanitarian crisis in the Greek islands which required immediate operational responses, but also the fact that [she had not been] involved until the end of the two procedures in question, in one case a month before the procedure was concluded and in the other two months'. He also informed her that he intended, nevertheless, to impose a reprimand on her for failing to inform her superiors or the competent authorities of the non-compliance with the financial regulation and thus breaching the obligations imposed by Article 21a of the Staff Regulations. Accordingly, he invited her to send him any observations she might have, in accordance with Article 11 of Annex IX to the Staff Regulations.

35 By email of 22 November 2019, the applicant sent her observations to the Secretary-General of the Parliament.

36 By decision of 19 December 2019 ('the contested decision'), sent under cover of a letter of 9 January 2020, the Secretary-General of the Parliament imposed a reprimand on the applicant for failing to 'inform her superiors or the competent authorities of the non-compliance with the financial regulation, which relat[ed] to a breach of Article 21a of the Staff Regulations'.

37 The letter to the applicant enclosing that decision stated as follows:

‘Before taking my decision, in addition to all the material in the file, I have very carefully considered the contents of your letter of 22 November, in which you emphasised the specific context of your role with EASO, involving a humanitarian crisis and the urgency that entails. In that respect, you referred in particular to the very frequent use of exception procedures for procurement in that context and to the fact that you had received, from colleagues responsible for procurement and operations, an assurance that everything was in line with the regulatory requirements. I have also noted that you state that your involvement in the matters was limited, and that you were under a very heavy workload at the time.

That is why I have decided on this disciplinary measure, which is not very severe in comparison with the misconduct, taking full account not only of the especially difficult conditions in which you had to perform your role, but also of the fact that you only became involved at the end of the process, and cannot therefore be held responsible for the initial procurement decisions. Lastly, I am aware that your service record at the European Parliament was otherwise unblemished.’

38 On 10 April 2020, the applicant lodged a complaint against the contested decision under Article 90(2) of the Staff Regulations.

39 By decision of 15 September 2020 (‘the decision rejecting the complaint’), notified to the applicant on the same day, the President of the Parliament rejected the complaint.

40 In the decision rejecting the complaint, the President of the Parliament stated the following:

‘It is apparent from the file and in particular from your client’s statements that she followed the general instruction inherent in her role, which was to progress the financial dossiers submitted to her, without giving substantive consideration to them, against a background of systematic use of exception procedures. Furthermore, your client has stated that she felt that her superiors required her to finish the work begun by her colleagues, that the Executive Director had been very insistent in pushing for the projects to be implemented by September 2017, and that he had wanted to expedite the procedures at all costs. It follows that there were orders within the meaning of Article 21a of the Staff Regulations.

Your client, who is a lawyer by training, ought to have appreciated, on reading Article 104 of the financial regulation (Regulation No 966/2012) and Article 134(1)(c) of the rules of application of the financial regulation, as applicable at the time of the events in question (Regulation No 1268/2012), of the irregularities and their potential consequences. As a lawyer, she ought to have been familiar with the principle of legal interpretation under which exceptions to general rules are to be interpreted narrowly. Article 104 of the financial regulation is to be read in conjunction with Article 134(1)(c) of the rules of application referred to above, which uses the phrases “in so far as is strictly necessary” and “for reasons of extreme urgency brought about by unforeseeable events”, which ought to have alerted your client, especially as she was aware that there had been 36 exception notes in 2016, evidencing a systematic use that is difficult to reconcile with the wording of those two provisions.

…’

II. Procedure and forms of order sought

41 By application lodged at the Court Registry on 21 December 2020, the applicant brought the present action.

42 By letter lodged at the Court Registry on 21 January 2021, the applicant made an application for anonymity. The Court granted that application by decision of 4 February 2021.

43 The defence, reply and rejoinder were lodged, respectively, on 24 March, 7 May and 21 June 2021.

44 On a proposal from the Fourth Chamber, the Court decided, pursuant to Article 28 of its Rules of Procedure, to assign the case to a Chamber sitting in extended composition.

45 On a proposal from the Judge-Rapporteur, the Court (Fourth Chamber, Extended Composition) decided to open the oral part of the procedure.

46 By letters of 9 August, 14 October and 10 November 2021, on a proposal from the Judge-Rapporteur, the Court (Fourth Chamber), by way of measures of organisation of procedure under Article 89 of the Rules of Procedure, invited the Parliament to file certain documents, and put questions to the parties. The parties answered those questions within the period prescribed.

47 The parties presented oral argument and answered questions from the Court at the hearing on 26 November 2021.

48 The applicant claims that the Court should:

– annul the contested decision and, so far as necessary, the decision rejecting the complaint;

– order the Parliament to pay the costs.

49 The Parliament contends that the Court should:

– primarily, dismiss the action as partially inadmissible and partially unfounded;

– in the alternative, dismiss the action as unfounded in its entirety;

– order the applicant to pay all the costs.

III. Law

A. The subject matter of the dispute

50 Under her first head of claim, the applicant seeks annulment, in so far as necessary, of the decision rejecting the complaint.

51 According to the case-law, a claim for annulment formally directed against the decision rejecting a complaint has the effect of bringing before the General Court the act against which the complaint was submitted, where that claim, as such, lacks any independent content (judgment of

6 April 2006, *Camós Grau* v *Commission*, T-309/03, EU:T:2006:110, paragraph 43; see also judgment of 13 July 2018, *Curto* v *Parliament*, T-275/17, EU:T:2018:479, paragraph 63 and the case-law cited).

52 In the present case, given that the decision rejecting the complaint merely confirms the contested decision and sets out the grounds supporting it, it must be held that the claim for annulment of the decision rejecting the complaint lacks any independent content, and that there is therefore no need to rule on that claim specifically. However, when examining the legality of the contested decision, the statement of reasons for the decision rejecting the complaint should be taken into account, as it is deemed to cover the statement of reasons in the contested decision (see, to that effect, judgment of 30 April 2019, *Wattiau* v *Parliament*, T-737/17, EU:T:2019:273, paragraph 43 and the case-law cited).

53 The considerations set out in the letter of 9 January 2020, by which the applicant was informed of the contested decision, also form part of the statement of reasons for that decision. The contested decision and the covering letter both came from the Secretary-General of the Parliament, and they were sent to the applicant on the same day.

B. The pleas in law and arguments relied on

54 The applicant puts forward two pleas in law. The first, which is divided into three parts, is based on a manifest error of assessment and on infringement of Article 21a of the Staff Regulations. Under the second, it is claimed that the contested decision is based on insufficient reasoning with regard to the reasons why the applicant knew or ought to have known that Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1; 'the financial regulation') and Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation No 966/2012 (OJ 2012 L 362, p. 1; 'the rules of application of the financial regulation'), had been infringed.

1. The obligation to inform laid down by Article 21a of the Staff Regulations

55 Article 21a(1) of the Staff Regulations, which, according to the Parliament, was infringed by the applicant, provides as follows:

'1. An official who receives orders which he considers to be irregular or likely to give rise to serious difficulties shall inform his immediate superior, who shall, if the information is given in writing, reply in writing. Subject to paragraph 2, if the immediate superior confirms the orders and the official believes that such confirmation does not constitute a reasonable response to the grounds of his concern, the official shall refer the question in writing to the hierarchical authority immediately above. If the latter confirms the orders in writing, the official shall carry them out unless they are manifestly illegal or constitute a breach of the relevant safety standards.

2. If the immediate superior considers that the orders must be executed promptly, the official shall carry them out unless they are manifestly illegal or constitute a breach of the relevant safety standards. At the request of the official, the immediate superior shall be obliged to give such orders in writing.

3. An official who informs his superiors of orders which he considered to be irregular or likely to give rise to serious difficulties shall not suffer any prejudice on that account.'

56 Article 21a(1) permits an official receiving an order he or she considers to be illegal not to comply with that order, provided that he or she follows the procedure set out in that provision, and imposes an obligation on that official to inform his or her superiors of the order, in accordance with that same procedure.

57 It is that second aspect of Article 21a of the Staff Regulations which is at issue in the present case.

2. The content of disciplinary decisions relating to a breach of Article 21a of the Staff Regulations

58 It must be observed that Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, Article 296 TFEU and the second paragraph of Article 25 of the Staff Regulations are intended, first, to provide the person concerned with sufficient details to allow him or her to ascertain whether or not the decision adversely affecting him or her is well founded and, secondly, to make it possible for the decision to be the subject of judicial review (judgments of 26 November 1981, *Michel* v *Parliament*, 195/80, EU:C:1981:284, paragraph 22 and of 19 November 2014, *EH* v *Commission*, F-42/14, EU:F:2014:250, paragraph 130).

59 The question whether a decision imposing a disciplinary penalty meets those requirements must be assessed having regard not only to its wording, but also to its context and to all the legal rules governing the matter in question (see, to that effect, judgments of 19 May 1999, *Connolly* v *Commission*, T-34/96 and T-163/96, EU:T:1999:102, paragraph 93, and of 21 October 2015, *AQ* v *Commission*, F-57/14, EU:F:2015:122, paragraph 113).

60 According to the case-law, there is no requirement for the appointing authority ('AA') taking a decision on a disciplinary matter to address, systematically, all the matters of fact and law which the person concerned raised during the proceedings (see, to that effect, judgments of 19 May 1999, *Connolly* v *Commission*, T-34/96 and T-163/96, EU:T:1999:102, paragraph 93, and of 30 May 2002, *Onidi* v *Commission*, T-197/00, EU:T:2002:135, paragraph 156). Otherwise, the administration would be obliged to respond to the official's arguments, even where they did not remain within limits and were entirely irrelevant.

61 On the other hand, the case-law does require the AA to indicate precisely the allegations against the official and the considerations which led it to adopt the chosen penalty (judgment of 21 October 2015, *AQ* v *Commission*, F-57/14, EU:F:2015:122, paragraph 113).

62 Where the official's alleged misconduct consists in a breach of Article 21a of the Staff Regulations, the rules set out in paragraphs 58 to 61 above require the AA to indicate how, in its view, the order that the official concerned did not draw to the attention of his or her superiors was irregular, and why he or she ought to have considered that order to be irregular, and was therefore obliged to draw it to their attention. Those matters are constitutive of the misconduct alleged against the official.

63 The AA must also mention, in the disciplinary decision, the mitigating and aggravating factors which justify the chosen penalty, so as to enable a judge to determine, if an application to that effect is made, that it is not manifestly disproportionate to the misconduct found to have been committed by the person concerned.

64 If the matters referred to in paragraphs 62 and 63 above are not set out, the person concerned will not be in a position to exercise his or her rights of defence effectively. Consequently, on the points in question, a general reference to the documents filed in the disciplinary proceedings, which contain a good deal of other material, is not sufficient.

3. The first plea in law

65 The first plea is divided into three parts, by which the applicant maintains that the Parliament infringed Article 21a of the Staff Regulations and made a manifest error of assessment in holding that she had received an order within the meaning of that provision (first part), in holding that she knew or ought to have known that the financial regulation and its rules of application had been infringed (second part) and in imposing a disciplinary penalty on her (third part).

(a) First part of the first plea

66 Under the first part of the first plea, the applicant submits that the AA of the Parliament infringed Article 21a of the Staff Regulations and made a manifest error of assessment, on the ground that she did not receive a specific order from the Executive Director of EASO to sign the notes of 11 May and 11 June 2017 ('the notes at issue'), and that in signing those notes, she was merely performing her duties.

67 In the defence, the Parliament maintains that, in relation to both the Chios building and the Lesbos building, it is apparent from the statements made by the applicant in the course of the investigation, from an email from the Executive Director of 1 April 2017, and from the application, that her involvement in the procurement process had been preceded by 'specific instructions' from the Executive Director of EASO, which constituted orders to the applicant within the meaning of Article 21a of the Staff Regulations.

68 In the reply, the applicant contends that that argument is inadmissible because it involves a substitution of reasoning by comparison with the decision rejecting the complaint. In that decision, she submits, the President of the Parliament stated that it was apparent from the material in the file and from the statements she had made that she had followed the 'general instruction' inherent in her role, which was to take action on the financial dossiers submitted to her, without giving substantive consideration to them, against a background of systematic use of exception procedures.

69 As to the substance of the argument, the applicant submits that the documents referred to by the Parliament in the defence do not prove that she received an order, within the meaning of Article 21a of the Staff Regulations, from the Executive Director of EASO.

70 The Parliament disputes both of those arguments.

(1) Admissibility of the argument advanced by the Parliament in the defence

71 According to the case-law applicable in civil service matters, the defendant institution may not substitute a completely new set of reasons for the initial, incorrect reasons set out in the act being challenged, but it may, including once litigation is under way, provide additional clarification of the reasons previously given (see, to that effect, judgment of 24 April 2017, *HF* v *Parliament*, T-584/16, EU:T:2017:282, paragraph 132 and the case-law cited).

72 In the present case, in the decision rejecting the complaint, the President of the Parliament determined that there had been an order, within the meaning of Article 21a of the Staff Regulations, not only on the ground that it was apparent from the file, and in particular from the statements made by the applicant, that she had 'followed the general instruction inherent in her role, which was to progress the financial dossiers submitted to her, without giving substantive consideration to them', but also because she had stated that 'she felt that her superiors required her to finish the work begun by her colleagues, that the Executive Director had been very insistent in pushing for the projects to be implemented by September 2017, and that he had wanted to expedite the procedures at all costs'.

73 In stating, in the defence, that it was apparent from the various documents referred to in paragraph 67 above that the applicant had received specific instructions from the Executive Director of EASO, the Parliament was referring not just to the first part but to the entirety of that statement.

74 It must therefore be held that, by including that clarification in the defence, the Parliament was not substituting, for the reasoning that had been given in the contested decision, reasoning which was new for the purposes of the case-law referred to in paragraph 71 above.

75 It follows that the argument advanced by the Parliament in the defence must be regarded as admissible.

(2) Merits of the first part of the first plea

76 In the defence, the Parliament explains that, in determining that the applicant had received an order within the meaning of Article 21a of the Staff Regulations, it had relied on the following :

– an email of 1 April 2017 from the Executive Director of EASO, containing direct and specific instructions concerning the procedure to be followed and the selection of the buildings;

– the applicant's statement, in her observations of 17 August 2018 on OLAF's summary of the facts, that 'the procedure was done in the Departments of Administration and Operations, and strongly steered by the Executive Director following his direct exchanges with the Greek authorities at highest level';

– the applicant's statement, made during the interview of 9 July 2019, held as part of the administrative procedure, that '[the Executive Director] made arrangements with the Greek Government for a building to be found', that her superiors 'made urgent requests for [her] to sign documents', that she 'felt obliged to finish the work begun by [her] colleagues by signing', that she had been 'initially asked, in May 2017, to sign an amendment to that contract, then in June 2017 to sign a further exception note';

– the applicant's statement, made in her observations of 9 July 2019 on the administrative investigation report, that 'as regards Chios, the Executive Director had pushed insistently for the exception note to be signed'.

77 It is apparent from that evidence that the Executive Director of EASO, who was the applicant's superior, gave instructions for the Lesbos and Chios offices to be relocated as swiftly as possible, that those instructions reached the applicant, even if indirectly, and that they led to her signing

the notes at issue, which, for her, constituted an obligation to be performed in the course of carrying out her duties. That evidence constitutes an order within the meaning of Article 21a of the Staff Regulations.

78 As the Parliament has stated, that conclusion is supported by paragraph 34 of the application, in which the applicant states that 'at the end of 2016, the Executive Director had taken the decision to initiate exception procedures to relocate EASO's and the Greek asylum service's operational support out of those hotspots'.

79 That finding is nevertheless disputed by the applicant.

80 In the first place, she states that the email of 1 April 2017 from the Executive Director of EASO was sent to all parties with an interest in the situation in the refugee camps and in the relocation out of those camps of the centres for processing of asylum applications, and that, if that email did contain instructions, they were addressed to A, the head of the Department of Operations, who, moreover, replied to it on 3 April 2017, without copying in the applicant. Furthermore, she argues, the email of 1 April 2017 concerned the island of Chios, and not to Lesbos.

81 In that regard, it must be observed first of all that the email of 1 April 2017 contained instructions with regard to the relocation out of the refugee camps of the offices and that the applicant was one of the addressees, just as the heads of the other departments were. While it is true that initially, it was mainly of concern to A, who was responsible for the Department of Operations, and would therefore be the person to sign the requested note, it came to concern the applicant as well, when she was asked to replace A.

82 Furthermore, it is not correct that A's subsequent email of 3 April 2017 was a reply to that of 1 April 2017. The email of 3 April 2017 was concerned with the execution of the Executive Director's instructions by the competent persons. Since, at that point in time, the applicant was not responsible for carrying out those instructions, there was nothing abnormal in A not copying her in.

83 Lastly, while the email of 1 April 2017 related mainly to the island of Chios, it also concerned the island of Lesbos, given that it stated in the seventh paragraph that 'Minister Mouzalas emphasised how important and urgent the starting up of office space outside the camps in Chios and in Lesvos is, and assured that the Government of Greece w[ould] support by making all necessary arrangements'.

84 The applicant's first argument must therefore be rejected.

85 In the second place, the applicant maintains that her reference to 'urgent requests for signature of documents', in the interview of 7 March 2019, held as part of the administrative procedure, did not relate to the notes at issue, but was part of a general comment about the background of urgency against which she had signed hundreds of documents of a financial nature. Furthermore, she states, those requests did not come from the Executive Director of EASO, but from the Department of Administration, and more specifically its Finance and Procurement sectors.

86 Similarly, when the applicant stated, during that interview, that she had been 'initially asked, in May 2017, to sign an amendment to the [Lesbos] contract, then in June 2017 to sign a further exception note [relating to Chios]'; she was again referring to requests from the Department of Administration, and not from the Executive Director of EASO, as is apparent, she states, when the answer she gave is read in full.

87 Contrary to what the applicant appears to believe, Article 21a of the Staff Regulations does not require the irregular order to be formally, directly and individually addressed to the official or other servant regarded as having infringed that provision; it is sufficient for that official or other servant to have become subject to an obligation to carry out an illegal act by virtue of having become aware of instructions from a superior.

88 Accordingly, the fact that the request for signature of the notes at issue may have come from the Department of Administration and not directly from the Executive Director of EASO is irrelevant, as it is clear, on reading the other documents identified by the Parliament, that the personnel of that department were acting under instructions from the Executive Director to expedite the implementation of the projects in question.

89 Similarly, it is irrelevant that the requests for signature may not have related specifically to the notes at issue provided that they encompassed them, which the applicant does not dispute.

90 Accordingly, the applicant's second argument must be dismissed.

91 In the third place, the applicant states that, when she said, in her observations of 9 July 2019 on the administrative investigation report, that 'as regards Chios, the Executive Director had pushed insistently for the exception note to be signed', she was referring to the background of urgency created by the pressure from the Member States and the Greek Government.

92 That objection does not in any way undermine the conclusion that the Executive Director of EASO expected the applicant to sign the note of 11 June 2017 and that, in her eyes, she was obliged to do so.

93 Accordingly, the applicant's third argument must also be dismissed.

94 In those circumstances, it must be held that the Parliament did not infringe Article 21a of the Staff Regulations and did not commit a manifest error of assessment in determining that the applicant had received an order within the meaning of that provision.

95 The first part of the first plea must therefore be dismissed.

(b) Second part of the first plea

96 Under the second part of the first plea, the applicant maintains that the Parliament made a manifest error of assessment in determining, in the decision rejecting the complaint, that as a lawyer by training, she knew or could or should have known, when she signed the notes at issue, that the requirements of the financial regulation and Article 134(1)(c) of its rules of application were not satisfied.

97 In that regard, the applicant submits, first, that EASO was in a situation of extreme urgency within the meaning of Article 134(1)(c) of the rules of application of the financial regulation, which meant that it was permissible for it to use the negotiated procedure without prior publication, second, that no objections were raised, within EASO, to the decision to use that procedure, and third, that she only became involved at the end of the decision-making process.

98 Under Article 21a of the Staff Regulations, which has been set out in paragraph 55 above, the official's obligation to inform is subject to the condition that he or she 'considers' the order received to be irregular and, where that order has been confirmed by the immediate superior, that he or she 'believes' that such confirmation does not constitute a reasonable response to the grounds of his or her concern.

99 In that regard, it must be observed that the official's obligation to inform his or her superiors of an order he or she considers to be irregular cannot be made conditional on the irregularity being manifest. Article 21a of the Staff Regulations attaches different effects to orders which appear to be irregular and orders which are manifestly illegal. While, in the first case, an official who has drawn attention to an order he or she considers to be irregular is ultimately required to carry out that order, if it is confirmed by the immediate superior, in the second case, he or she is permitted not to carry it out in spite of such confirmation.

100 At the same time, mere doubt as to the regularity of an order received by an official cannot be sufficient to require that official to inform his or her superiors of that order. If Article 21a of the Staff Regulations required the official receiving an order to inform his or her immediate superior and, where applicable, the hierarchical authority directly above, of any doubt he or she might entertain about that order, the functioning of the administration would disrupted by issues raised over a multitude of orders given by superiors to their subordinates.

101 Thus, a disciplinary liability cannot arise on the part of the official, on the basis of a breach of the obligation laid down by Article 21a of the Staff Regulations, if the administration is not able to establish, at the very least, that the legality of the order received was such as to give rise to serious doubt on the part of that official, having regard, in particular, to the degree of care expected of the official in the exercise of his or her functions and the circumstances in which the order came to his or her attention.

102 Thus, in assessing whether the official concerned was required to inform his or her superiors of an order he or she considered to be irregular, under Article 21a of the Staff Regulations, consideration must be given to:

– first, the accessibility and complexity of the applicable rules;

– second, the official's training, his or her level of responsibility within the institutions and agencies of the European Union, and his or her experience;

– third, the context in which the order was received.

103 The determination of whether the order was liable to give rise to serious doubt, so as to oblige the official to inform his or her superiors of it, is to be made as at the time of receipt of that order.

(1) The accessibility and complexity of the applicable rules

104 In the present case, it is apparent from the decision rejecting the complaint that, when the Parliament concluded that the applicant knew or ought to have known that the order she had received did not comply with Article 104 of the financial regulation and Article 134(1)(c) of its rules of application, and therefore that she had infringed her obligation to inform her superiors of that fact, it was because she was a lawyer by training and that she knew that 36 exception notes had previously been signed, 'evidencing a systematic use that is difficult to reconcile with the wording of those two provisions'.

105 However, those factors are not a proper basis on which to conclude that the applicant was obliged to inform her superiors of the allegedly illegal order.

106 Public procurement is governed by complex rules, knowledge of which cannot be demanded of a lawyer who has received general training, especially since, as is apparent from Article 2(1)(5) and Article 10(a) of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65), that directive, which lays down the common procurement law applicable in the Member States, does not apply to immovable property contracts. In that respect, that directive differs from the financial regulation and its rules of application, which are applicable in the present case.

107 In so far as necessary, the complexity of the public procurement rules is evidenced by the fact that, in the decision rejecting the complaint, the Parliament criticised the applicant for failing to inform her superiors that the order was contrary to Article 134(1)(c) of the rules of application of the financial regulation, which lay down the conditions for use of the negotiated procedure without prior publication in cases of extreme urgency, but did not mention Article 134(1)(g) of those rules, which, in relation to building contracts, requires the contracting authority to prospect the local market, even though in its pleadings – though not in the contested decision – it states that that provision was also infringed by EASO. This omission shows how difficult it is for a non-specialist lawyer to master all aspects of this field.

108 Furthermore, the fact that 36 exception notes had been signed before the applicant signed the notes at issue was not sufficient to give rise to serious doubt as to the legality of the order she received. The fact that those notes were described as 'exception notes' did not mean that they were illegal, only that they were intended to justify the use of a procedure for awarding public contracts other than the open or restricted procedure which, as stated in Article 104(5)(a) of the financial regulation, may be used for any 'purchase' made by the EU institutions.

109 On the contrary, the fact that exception notes were so frequently drawn up within EASO is to be regarded as a reason why the applicant would have thought that the conditions for the use of a negotiated procedure without prior publication were satisfied, given the circumstances in which EASO had to carry out its work.

110 Thus, the reasons given by the Parliament, in the contested decision, for its conclusion that the applicant knew or ought to have known that the order she received was illegal, and therefore that there was serious doubt as to its regularity, are unfounded.

(2) The official's training, his or her level of responsibility within the institutions and agencies of the European Union, and his or her experience

111 The Parliament maintains that the duties performed by the applicant, and in particular the information to which she had access, meant that she knew or ought to have known that the order she received was irregular.

112 In that regard, the Parliament advances three arguments.

113 In the first place, it submitted, at the hearing, that the conclusion that the applicant knew or ought to have known that the order was illegal was justified because, as the head of EASO's Department of Operations and the authorising officer, her level of responsibility was high.

114 However, that justification is not given in the contested decision, despite being crucial to the conclusion that the applicant was under an obligation to inform by virtue of Article 21a of the Staff Regulations. As stated in paragraph 62 above, a decision imposing a disciplinary penalty for breach of Article 21a of the Staff Regulations must set out all the matters on the basis of which the institution has concluded that there was serious doubt as to the legality of the order at issue.

115 In any event, it must be observed that, when she signed the notes at issue, the applicant was head of the Department of Asylum Support and that she had been asked to replace her colleague, the head of the Department of Operations. As is apparent from Annex A6 to the application, the applicant only became interim head of the latter department on 16 July 2017, or in other words after the notes at issue had been signed. In addition, the Finance and Procurement sectors did not belong to that department, but to the Department of Administration.

116 Moreover, while it is true that, as authorising officer, the applicant had a specific responsibility, described in Article 65(5) and Article 66(1) of the financial regulation and in Article 44(1) of Decision No 20 of the Management Board of EASO, adopted pursuant to Article 37 of Regulation No 439/2010, it should be noted that she was appointed to that role on 20 April 2017, or a few weeks before signature of the notes at issue, and therefore that, at the time of signature, she could not have had significant experience in the field of public procurement. Furthermore, as the applicant pointed out at the hearing, it is apparent from Article 44(2) and Article 45(1) of Decision No 20 mentioned above that the authorising officer must be able to count on internal control procedures. In the present case, it is not disputed that the notes at issue had been signed off by the Finance and Procurement sectors of EASO's Department of Administration.

117 The argument of the Parliament referred to in paragraph 113 above must therefore be rejected.

118 In the second place, the Parliament has argued, in its pleadings and at the hearing, that the proof that the applicant knew or ought to have known that the order was irregular, and therefore that she was obliged to bring it to the attention of her superiors, lay in the fact that, in 2018, the refurbishment of the Chios building had been dealt with under a normal procedure and that, in August 2018, the applicant had taken steps to regularise the procedures concerning the two buildings.

119 Again, this argument does not appear in the reasoning of the contested decision, which is supposed to explain why the order at issue should have appeared to be irregular (see paragraphs 62 and 114 above).

120 Furthermore, those steps were taken after the notes at issue had been signed, which means that, contrary to the rule set out in paragraph 103 above, they do not relate to the context in which the order was received.

121 In any case, the reason why the applicant regularised the various procedures was not that, at the time of signing the notes at issue, she knew that the order at issue was illegal, but that, in July and August 2017, new heads of the Finance and the Procurement sectors of EASO's Department of Administration were appointed, and they drew the applicant's attention to the alleged irregularities. Moreover, in December 2017, the applicant had been informed by OLAF that it had opened an investigation into irregularities and serious misconduct on the part of the Executive Director and other EASO personnel, relating in particular to public procurement procedures. More specifically, on 17 August 2018, the applicant had made observations on the summary of the facts which had been sent to her by OLAF (see paragraph 23 above).

122 The argument of the Parliament referred to in paragraph 118 above must therefore be rejected.

123 In the third place, the Parliament maintains, in the defence, that the lease of the Chios building had been concluded against the advice of senior managers.

124 Besides the fact that, once again, that claim does not appear in the contested decision, but only in the OLAF summary of the facts, no further detail was given at any later stage of the proceedings. The senior managers said to have advised against the plan have not been identified, and it has not been shown that the applicant had been informed of their opinion.

125 The argument of the Parliament referred to in paragraph 123 above must therefore be rejected.

126 From the considerations set out above, it follows that the matters put forward by the Parliament in relation to the applicant's duties and responsibilities within EASO do not justify the conclusion that there was serious doubt as to the legality of the order she received, and that she was consequently obliged to inform her superiors of that order pursuant to Article 21a of the Staff Regulations.

(3) The context in which the order was received

127 Having rejected the considerations relied on by the Parliament, it should be observed, for the sake of completeness, that in its assessment of the penalised conduct, the Parliament did not have regard, to the extent required by law, to the various circumstances surrounding the allegedly illegal order, despite those circumstances having played a decisive role in the process of signature of the notes at issue.

128 In the first place, as the applicant stated in her pleadings – without demur from the Parliament – the massive influx of migrants fleeing the war in Syria led to a migratory and humanitarian crisis, especially on the Greek islands of Lesbos and Chios.

129 More specifically, the Moria refugee camp, on the island of Lesbos, had been devastated by fire, and there had been a series of riots in that camp, as well as in the Vial camp, on the island of Chios, and working conditions had thus become more and more dangerous for the staff and experts deployed on those two islands by the Member States – so much so that the Member States had begun to withdraw them.

130 Those circumstances constituted a situation of urgency, resulting from the need to ensure the safety of the staff and experts deployed on the islands of Lesbos and Chios to manage the influx of migrants.

131 In the second place, as has been stated in paragraph 116 above, the decision to use the negotiated procedure without prior publication had been approved by the Finance and Procurement sectors of EASO's Department of Administration, which had specific responsibility for that issue. Furthermore, no objection was raised to that decision either by the Management Board of EASO or by the European Commission, which is represented on that board. On the contrary, the Commission had approved the 36 exception notes issued during the year in question, as can be seen from its activity report for 2016.

132 Furthermore, as the applicant has pointed out, she signed the notes at issue at the end of a decision-making process that had been ongoing for a considerable period. Thus, when, on 11 May 2017, the applicant signed the note relating to the building on the island of Lesbos, in place of A, the buildings had been selected in letters of February 2017, as regards Lesbos, and of April 2017 as regards Chios, as can be seen from Annexes A19, A20 and A34 to the application. Furthermore, the note of 11 May 2017 relating to the building on the island of Lesbos supplemented an initial note that had been signed by A on 22 February of that year, to add 12 working spaces, to achieve the objectives set by the initial note and to ensure compliance with the requirements of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

133 In the third place, at the time of signature of the notes at issue, the applicant had a very heavy workload as she was obliged to carry out her duties as head of EASO's Department of Asylum Support while also being responsible, albeit together with the head of the Department of Administration, for the day-to-day management of the Department of Operations, as the head of that department, A, was absent due to illness.

134 That circumstance should not have been taken into account by the Parliament solely as a mitigating factor in determining the penalty to be imposed on the applicant, but should also have been taken into consideration in determining whether she had breached Article 21a of the Staff Regulations.

135 On the basis of those considerations, it is clear that the circumstances in which the notes at issue were signed do not indicate any breach by the applicant of that provision.

136 That position is challenged by the Parliament, which raises two objections to the observations respectively set out in paragraphs 128 and 129 and in paragraphs 131 and 132 above.

137 First, the Parliament maintains that while the situation was urgent, the procedures used to lease the buildings on Lesbos and Chios lasted, respectively, 8 and 10 months, and that EASO would thus have had sufficient time for a standard procurement procedure conforming to the financial regulation and its rules of application. The requirement laid down by Article 134(1)(c) of the rules of application, that the extreme urgency must make it impossible to comply with the time limits applicable to competitive procedures, was thus not met.

138 That argument is irrelevant, however. Under Article 21a of the Staff Regulations, what the institution is required to demonstrate is not that the order was illegal, but the fact that, in spite of serious doubt as to its legality – as defined in paragraphs 101 and 102 above – the official did not inform his or her superiors of it.

139 Furthermore, the determination of whether there was serious doubt cannot be made on the basis of circumstances post-dating receipt of the order which is said to be illegal (see paragraphs 103 and 119 above).

140 The Parliament's argument must therefore be rejected.

141 Next, the Parliament maintains that responsibility for the breaches allegedly committed by the staff of the Finance and Procurement sectors must be imputed to the applicant. The second paragraph of Article 21 of the Staff Regulations indicates that the responsibility of subordinates in no way releases the official in charge of a branch of the service from his or her own responsibilities. Furthermore, Article 65(5) of the financial regulation provides that members of staff entrusted with carrying out certain operations necessary for implementing the budget and presenting the accounts act under the responsibility of the authorising officer.

142 However, that argument cannot be accepted.

143 The Parliament's argument concerning Article 21 of the Staff Regulations can be seen to be ineffective, as that provision presupposes that there is a hierarchical link between the persons concerned, whereas in the present case there is no such link, as the applicant, who was head of EASO's Department of Asylum Support was not the superior of those in the Finance and Procurement sectors of the Department of Administration who prepared the notes at issue.

144 As regards Article 65(5) of the financial regulation, besides the fact that that provision has to be read in conjunction with Article 44(2) and Article 45(1) of Decision No 20, which have been referred to in paragraph 116 above, regard must also be had to the fact that, when she signed the notes at issue, the applicant had only a little experience as an authorising officer.

145 In any event, the Parliament's argument does not detract from the observation that neither the Management Board of EASO nor the Commission raised objections to exception notes such as the notes at issue.

146 The Parliament's argument must therefore be rejected.

147 From the foregoing considerations, it follows that the Parliament misapplied Article 21a of the Staff Regulations by concluding that the applicant knew or ought to have known that the order she had been given to sign the notes at issue was vitiated by an irregularity.

(c) Third part of the first plea

148 Under the third part of the first plea, in which two complaints are raised, the applicant maintains in the alternative – in the event that the breach of Article 21a of the Staff Regulations were to be upheld – that, having regard to the amount of work she was required to undertake, the Parliament made a manifest error of assessment in imposing a disciplinary penalty on her.

149 In that regard, the applicant submits that at the time of the events in question – May and June 2017 – she was responsible for managing both EASO's Department of Asylum Support, pursuant to her contract, and its Department of Operations, due to her colleague's absence on sick leave. She states that a combined total of 200 people worked in those departments.

150 The applicant submits that, in addition to the main activity of those departments, her duties therefore included performance appraisals, recruitment, the continuous deployment of experts from the Member States, chairing scheduled meetings with the Member States' points of contact, ongoing involvement in increased cooperation with Turkey and ongoing involvement – together with the Departments of Administration and Operations – in procurement.

151 The applicant states that the amount of work involved in carrying out those activities required her to work very long days, as evidenced by her work diary and the register of her entries and exits.

152 The Parliament submits that the applicant's argument is inadmissible and unfounded.

(1) Admissibility of the third part of the first plea

153 The Parliament submits that the third part of the first plea is inadmissible, on the ground that the argument on which it is based was not raised by the applicant in her complaint.

154 In that regard, it must be observed that, according to the case-law, the rule of consistency between the pre-litigation complaint and the subsequent action, which requires, for a plea before the Community judicature to be admissible, that plea or complaint must have already been raised in the pre-litigation procedure, enabling the AA to know the criticisms made by the person concerned of the contested decision. That rule is justified by the very purpose of the pre-litigation procedure, which is to allow for an amicable settlement of disputes arising between officials and the administration. It follows that, in actions brought by officials, the claims advanced before the Courts of the European Union may include only heads of claim based on the same cause of action as that of the heads of claim in the complaint. Those heads of claim may be developed, before the Courts of the European Union, by means of pleas and arguments which did not necessarily appear in the complaint but are closely linked to it (see judgment of 16 June 2021 *Lucaccioni* v *Commission*, T-316/19, EU:T:2021:367, paragraph 90 (not published) and the case-law cited).

155 In the present case, it must be observed that in paragraphs 46 to 49 of her action, the applicant raised the argument referred to in paragraphs 149 to 151 above.

156 It is true that that argument was intended to establish not that the penalty imposed on her was excessive, contrary to Article 10(a) of Annex IX to the Staff Regulations, but that the fact that she had not made detailed checks before signing the notes at issue could not be regarded as constituting a breach, on her part, of Article 21a of the Staff Regulations.

157 Nevertheless, the case-law indicates that since the pre-litigation procedure is informal in character and those concerned are acting without the assistance of a lawyer at that stage, the administration must not interpret the complaints restrictively but must, on the contrary, examine them with an open mind (judgments of 7 May 2019, *WP* v *EUIPO*, T-407/18, not published, EU:T:2019:290, paragraph 119, and of 8 September 2021, *AH* v *Eurofound*, T-630/19, not published, EU:T:2021:538, paragraph 42).

158 Furthermore, it is not the purpose of Article 91 of the Staff Regulations, from which the rule of correspondence derives, to bind strictly and absolutely the contentious stage of the proceedings, if any, provided that the action changes neither the legal basis nor the subject matter of the complaint (judgments of 7 May 2019, *WP* v *EUIPO*, T-407/18, not published, EU:T:2019:290, paragraph 119, and of 14 December 2018, *TP* v *Commission*, T-464/17, not published, EU:T:2018:1006, paragraph 33).

159 Having regard to the close connection that exists in disciplinary proceedings between the penalty imposed and the finding of misconduct, and bearing in mind that complaints in civil service matters are to be examined with an open mind, it must be held, in accordance with the case-law referred to in paragraphs 157 and 158 above, that the argument advanced under the third part of the first plea is admissible.

(2) Merits of the third part of the first plea

(i) The first complaint, based on the applicant's workload at the material time

160 Under the first complaint, the applicant criticises the AA of the Parliament for failing to have regard, as a mitigating factor, to the fact that she had a heavy workload at the time of the events in question.

161 In that regard, it must be observed that, in her letter of 22 November 2019, the applicant asked the Secretary-General of the Parliament to take the following circumstances into account: the context of a humanitarian crisis, the fact that she had become involved at the end of both of the public procurement procedures at issue, her extremely heavy workload, which is described in detail, her conduct throughout the course of her career and her full cooperation at all stages of the investigation.

162 In the letter of 9 January 2020 enclosing the contested decision, the Secretary-General of Parliament stated that he had 'very carefully considered the contents of [the applicant's] letter of 22 November 2019', 'noted that [she had] a very heavy workload at the time', and 'tak[en] full account … of the especially difficult conditions in which [she] had to perform [her] role'.

163 In those circumstances, it must be held that, contrary to the applicant's arguments, her workload at the time of the events in question was taken into account by the Secretary-General of the Parliament when he decided to adopt the decision imposing a penalty on her.

(ii) The second complaint, concerning the Parliament's decision to impose a penalty on the applicant

164 By the line of argument referred to in paragraphs 148 to 151 above, the applicant raises a more general challenge to the decision to impose a penalty on her. She considers that, even if a finding of breach of Article 21a of the Staff Regulations had to be made, the AA of the Parliament should have refrained from imposing any penalty.

165 In that regard, it must be observed that Article 10 of Annex IX to the Staff Regulations does not specify any fixed relationship between the penalties it sets out and the types of misconduct committed by officials (see, to that effect, judgments of 5 June 2019, *Bernaldo de Quirós* v *Commission*, T-273/18, not published, EU:T:2019:371, paragraph 126, and of 11 April 2016, *FU* v *Commission*, F-49/15, EU:F:2016:72, paragraph 122).

166 However, that provision expressly requires the disciplinary penalties imposed to be commensurate with the seriousness of the misconduct.

167 To that end, it sets out a non-exhaustive list of criteria to be taken into account by the AA in the choice of penalty, so as to comply with the requirement of proportionality. Those criteria include, in particular, 'the circumstances in which [the misconduct] occurred'.

168 On the basis of those considerations, it has been held in the case-law that the determination of the penalty must be based on an overall assessment, which is to be carried by the AA having regard to the criteria set out in Article 10 of Annex IX to the Staff Regulations and to all the concrete facts and matters appertaining to each individual case (see, to that effect, judgments of 5 June 2019, *Bernaldo de Quirós* v *Commission*, T-273/18, not published, EU:T:2019:371, paragraph 126, and of 11 April 2016, *FU* v *Commission*, F-49/15, EU:F:2016:72, paragraph 122).

169 Thus, in the decision imposing the penalty, the AA must set out the reasons why, having regard to the facts and circumstances of the case, it has imposed one penalty rather than another (see paragraphs 61 and 63 above).

170 For their part, the Courts of the European Union, when an issue is raised before them in relation to that point, must determine whether the particular facts and circumstances of the case, as set out by the AA in the decision imposing the sanction, are properly regarded in law as aggravating or mitigating factors (see, to that effect, judgment of 9 June 2021, *DI* v *ECB*, T-514/19, under appeal, EU:T:2021:332, paragraph 196).

171 In carrying out the review, the Courts of the European Union must also determine whether the weight attached by the disciplinary authority to the aggravating or mitigating circumstances is proportionate (see, to that effect, judgments of 16 March 2004, *Afari* v *ECB*, T-11/03, EU:T:2004:77, paragraph 203, and of 9 September 2010, *Andreasen* v *Commission*, T-17/08 P, EU:T:2010:374, paragraphs 146 and 147).

172 That requirement derives from Article 47 of the Charter of Fundamental Rights, which provides that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal.

173 In order for the remedy to be effective, the 'penalty' must be subject to the subsequent review of a judicial body which has the power to assess fully the proportionality between the misconduct and the penalty, where that penalty has been imposed by an administrative authority which – like the Secretary-General of the Parliament in the present case – does not itself satisfy the conditions laid down in Article 47 of the Charter of Fundamental Rights (see, to that effect, judgments of 15 May 2012, *Nijs* v *Court of Auditors*, T-184/11 P, EU:T:2012:236, paragraph 85 and the case-law cited, and of 9 June 2021, *DI* v *ECB*, T-514/19, under appeal, EU:T:2021:332, paragraph 197; see also, to that effect, ECtHR, 31 March 2015, *Andreasen v. United Kingdom and 26 other Member States of the European Union*, CE:ECHR:2015:0331DEC002882711, § 73).

174 Under Article 3 of Annex IX to the Staff Regulations, it was open to the Secretary-General of the Parliament, having decided that it was appropriate to make a finding that the applicant had infringed Article 21a of the Staff Regulations, to choose, from the following options, that which seemed most appropriate having regard to the facts of the case.

175 First, it was open to him not to take any disciplinary measure (Article 3(1)(b) of Annex IX to the Staff Regulations).

176 Second, it was open to him to address a warning to the official, without taking any disciplinary measure (Article 3(1)(b) of Annex IX to the Staff Regulations).

177 Third, it was open to him to initiate disciplinary proceedings not involving the disciplinary board, leading to the imposition of a written warning or a reprimand (Article 3(1)(c)(i) and Article 11 of Annex IX to the Staff Regulations).

178 Fourth, it was open to him to initiate disciplinary proceedings before the disciplinary board, enabling more severe penalties to be imposed (Article 3(1)(c)(ii) and Article 9 of Annex IX to the Staff Regulations).

179 In the present case, it is apparent from the file that, on 8 November 2019, the Secretary-General of the Parliament, in deciding to impose a penalty on the applicant without putting the matter before the disciplinary board, decided in favour of the third option, set out in paragraph 177 above.

180 In the letter of 9 January 2020 enclosing the contested decision, the Secretary-General of the Parliament justified his decision by reference to the following matters:

– the specific context, involving a humanitarian crisis and the urgency that entails;

– EASO's very frequent use, in that context, of exception procedures for procurement;

– the fact that the applicant had received, from colleagues responsible for procurement and operations, an assurance that everything was in line with the regulatory requirements;

– the applicant's limited involvement, at a late stage of the procedure, in the matters at issue, and the fact that she was not responsible for the initial procurement decisions;

– the very heavy workload that the applicant had at the time;

– the applicant's unblemished service record.

181 As the applicant pointed out at the hearing, those six considerations are entirely in her favour and suggest that, if she is to be held to have been at fault at all, the degree of fault should be regarded as diminished.

182 Those circumstances, as set out in the letter of 9 January 2020, would have justified the AA of the Parliament in deciding to make a finding of misconduct without imposing a penalty, addressing a warning to the applicant or, at the most, a written warning under Article 11 of Annex IX to the Staff Regulations.

183 On the other hand, the circumstances set out by the AA of the Parliament in the letter of 9 January 2020 do not provide any basis on which the imposition of the most severe penalty available in proceedings not involving the disciplinary board – a reprimand – could be justified.

184 In the light of the foregoing, it must be held that, having regard to the facts and matters put forward by the AA of the Parliament in support of the contested decision, the penalty imposed on the applicant was not commensurate with the misconduct it found her to have committed.

185 At the hearing, the Parliament submitted that the reason for selecting the most severe of the penalties set out in Article 11 of Annex IX to the Staff Regulations was that the signature of the notes at issue had caused significant loss to the European Union.

186 It also stated that that was set out on page 3 of the administrative investigation report, which report is referred to in the fifth recital of the contested decision.

187 However, it should be noted that the fifth recital of the contested decision is worded as follows: 'having regard to the conclusions of the administrative investigation report of 7 June 2019'.

188 That recital thus does not refer to the administrative investigation report in its entirety, but only, in general terms, to the conclusions of that report, which do not mention any loss which may have been caused to the European Union by the signature of the notes at issue.

189 In any event, it must be observed that, according to settled case-law, (see, to that effect, judgments of 28 March 1996, *V* v *Commission*, T-40/95, EU:T:1996:45, paragraph 36; of 10 September 2019, *DK* v *EEAS*, T-217/18, not published, EU:T:2019:571, paragraph 149; and of 21 October 2015, *AQ* v *Commission*, F-57/14, EU:F:2015:122, paragraph 113) aggravating circumstances – just like mitigating circumstances – must be set out in the contested decision. It is important, for the reasons given in paragraphs 165 to 173 above, that the considerations put forward by the AA in support of a disciplinary decision are capable of justifying the penalty imposed on the person concerned.

190 For the same reason, the circumstances unfavourable to the applicant mentioned in Section VI of the administrative investigation report, which states 'experienced official, lawyer by training and former judge in Belgium, she ought to have satisfied herself that the applicable rules and procedures were being followed' and '[she] accepted a post for which, she says, she was not well prepared', cannot be taken into consideration so as to justify the imposition of a reprimand rather than a warning or agentle hint – if indeed any penalty was to be imposed on her – when the disciplinary proceedings had been initiated without involvement of the disciplinary board.

191 In those circumstances, it must be held that the facts and matters set out by the Parliament in the contested decision do not demonstrate that the penalty imposed on the applicant meets the requirement of proportionality laid down by Article 10 by Annex IX to the Staff Regulations.

192 That error means that the second complaint of the third part of the first plea must be held admissible and well founded.

193 The first plea having been held to be well founded as regards the second part, and as regards the second complaint of the third part, it follows that the contested decision must be annulled and that it is unnecessary to examine the second plea.

IV. Costs

194 Under Article 134(1) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

195 In the present case, as the Parliament has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby:

1. Annuls the decision of the European Parliament of 19 December 2019 imposing a reprimand on OT.

2. Orders the Parliament to pay the costs.

Gervasoni Madise Nihoul

Frendo Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 23 March 2022.

[Signatures]